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United States Secretary of Labor*

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARTIN J. WALSH,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

CHE GARIBALDI dba TAQUERIA GARIBALDI,
a California corporation; EDUARDO
HERNANDEZ, an individual; HECTOR
MANUAL MARTINEZ GALINDO, an individual;
and ALEJANDRO RODRIGUEZ, an individual,

Defendants.

Case No. 2:22-CV-00756-WBS-KJN

**THE SECRETARY'S APPLICATION
FOR TEMPORARY RESTRAINING
ORDER FOR DEFENDANTS TO
SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

Date: n/a
Time: n/a
Judge: Hon. William B. Shubb

1 The United States Secretary of Labor moves under Federal Rule of Civil Procedure 65
2 and Section 17 of the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 217, for a Temporary
3 Restraining Order and an Order for Defendants to Show Cause why a Preliminary Injunction
4 should not issue, enjoining them as follows:

- 5 1. Defendants shall comply with the FLSA’s anti-retaliation provisions under
6 Section 15(a)(3);
- 7 2. Defendants shall not retaliate or discriminate in any way against any current or
8 former employees of the Defendants at issue in this litigation, or any potential
9 witness in this litigation; specifically, Defendants are enjoined from:
 - 10 a) Retaliating, intimidating, threatening, or discriminating in any way against
11 any current or former worker or other witness who might seek to
12 participate in this litigation, has spoken to a DOL representative, or who is
13 believed to have spoken to a DOL representative;
 - 14 b) Representing to any worker that they cannot or should not speak to a DOL
15 representative or participate in this litigation;
 - 16 c) Representing to any worker that they can or should provide false
17 information regarding the terms and conditions of their employment to
18 anyone, including a DOL representative or judicial officer;
 - 19 d) Representing to workers that the DOL case in this matter has concluded
20 while litigation remains ongoing;
 - 21 e) Threatening workers in any manner, including threats of deportation,
22 termination, restaurant closure or legal action;
 - 23 f) Asking or requiring any worker to discuss her/his/their immigration status
24 or the immigration status of any co-worker in relation to this case;
 - 25 g) Asking or requiring any worker to sign any document that instructs the
26 worker on what to say at any court proceeding or to a DOL representative;

h) Asking or instructing any worker to sign any document that purports to establish facts relating to any matter at issue in this litigation, such as the number of hours worked or Defendants' payment methods.

3. Defendants shall not terminate any workers without first giving the employee and the Secretary of Labor seven days' notice as to who is being fired and why;

4. Defendants shall comply with the FLSA's recordkeeping provisions under Sections 11(c) and 15(a)(5);

5. Defendants are enjoined from maintaining false information in records they are required to maintain by law;

6. Defendants shall implement a reliable timekeeping system for each employee to record her/his/their own daily start and stop times that employees may use to clock in at the start of the work day and out at the end of the work day;

7. Defendants shall provide the Secretary with access to the raw data and records of this time-keeping system and a record reflecting if and when any changes were made to this data;

8. Defendants shall maintain accurate and complete records of all wages paid to each of their employees each pay period, including gross wages, deductions, and net pay;

9. Defendants are enjoined from paying wages to any employees through non-payroll accounts;

10. Defendants shall send the Exhibit A – Notice to Employees ("Exhibit A") (attached to the memorandum of points and authorities) in English and Spanish via U.S. Mail to all workers at their last known residential addresses within seven days after a Preliminary Injunction is issued;

11. Defendants shall provide a copy of Exhibit A to all employees it hires or invites back to work;

12. Within seven days after a Preliminary Injunction is issued, Defendants shall allow two DOL representatives to enter the premises at the chain of restaurants located at

(a) 1841 Howe Avenue, Sacramento, California 95825 (“Howe restaurant”); (b) 3425 El Camino Avenue, Sacramento, California 95821 (“El Camino restaurant”); and (c) 10000 Fairway Drive #110, Roseville, California 95678 (“Roseville restaurant”) on a work day to read Exhibit A out loud in both English and Spanish to all workers and other building occupants and distribute copies of these notices to workers;

13. Within two days after a Preliminary Injunction is issued, Defendants or their agents shall prominently post multiple copies of the written notices attached hereto as Exhibit A throughout the restaurants located at the Howe restaurant, El Camino restaurant, and Roseville restaurant, such that these notices are visible to all employees and building occupants or affiliates;

14. Defendants shall maintain paper copies of Exhibit A in English and Spanish and shall make these available to any employee or other individual who requests a copy;

15. Defendants shall forthwith provide a copy of this Order to all persons acting in concert or participating with Defendants in their business operations. Defendants shall provide all necessary information about this Order to such parties. Defendants shall keep a log with the names and addresses of all persons who have been provided with a copy of this Order;

16. Defendants shall be precluded from speaking with employees about any matter relating to this case, except as directed by the terms of this injunction;

17. Defendants shall be enjoined from noticing or proceeding with depositions of former or current employees unless and until the Order of this Court specifying the terms for redressing Defendants’ past retaliatory conduct and intimidation violative of Section 15(a)(3); and

18. Defendants shall pay for the Secretary’s costs and expenses in filing this motion.

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1 This Application is based on the accompanying: Memorandum of Points and Authorities;
2 Declaration of Department of Labor investigator Raquel Alfaro; and the Declaration of
3 Secretary's counsel Jennifer L. Sta. Ana. The Secretary is likely to succeed on the merits of his
4 claim that Defendants violated Sections 15(a)(3), 15(a)(5), and 11(c) of the FLSA when they
5 threatened to terminate employees, waged a campaign of intimidation against their employees
6 for engaging in or perceiving employees engaged in protected activities, and required employees
7 to provide false information to the Secretary's investigators. Unless Defendants are enjoined and
8 restrained as described above, the integrity of the judiciary system, potential employee witnesses,
9 the Secretary, and the public interest will be irreparably harmed.

10 Undersigned counsel certifies that, pursuant to Local Rule 231 and Federal Rule of Civil
11 Procedure 65, she conferred by letter on May 11, 2022 and telephonically with counsel for all
12 Defendants on May 16, 2022 regarding the substance of this Application, and specifically
13 notified Defendants' counsel on June 30, 2022 of the date of this Application, the request for the
14 earliest available hearing date and time before this Court, and the nature of the relief to be
15 requested. Defendants' counsel replied that Defendants prefer a hearing date during the week of
16 July 11, 2022. If that is the earliest possible date for the Court and Defendants stop making
17 threats to workers, the Secretary has no objection to the request. The Secretary's counsel states
18 that she understands that Defendants oppose this Application. Contact information for counsel
19 for all opposing parties is:

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1 Date: July 1, 2022

Respectfully submitted,

2 SEEMA NANDA
Solicitor of Labor

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4 MARC A. PILOTIN
Regional Solicitor

5 BORIS ORLOV
6 Counsel for Wage and Hour

7 /s/ Jennifer L. Sta.Ana
8 JENNIFER L. STA.ANA
9 Trial Attorney

10 *Attorneys for Plaintiff Martin J. Walsh*
11 *United States Department of Labor*
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